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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/764,739
Filing Date: January 26, 2004
Appellant(s): CONNELLY, MICHAEL P.

James D. Hallenbeck
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06 April 2011 appealing from the Office action mailed 10 June 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:
Claims 1-37.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

2003/0073489

HETCH ET AL

4-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

- 1. Claims 1-37 are rejected under 35 U.S.C. 102(a) as being anticipated by Hecht et al (US 2003/0073489 A1).**
- 2. Regarding claims 1, 19 and 37;** Hecht discloses a computerized gaming system, comprising: a gaming module, comprising a processor and gaming code which is operable

when executed on the processor to conduct a wagering game on which monetary value can be wagered, (§ [0004]); and an audio module, the audio module operable to play an audio track (an audio track is any recorded sound, song or piece of music), the audio track comprising a plurality of selected audio element tracks (audio element tracks are musical variables) that are played at the same time to create the played audio track, (§ [0055]), wherein the selected audio element tracks comprise two or more instruments (wherein the musical variables consist in changes in instrument), played in the same key (wherein Hecht teaches the entire music being played in the same key any changes not related in key will continue the music in the same key, therefore all selections of instrument changes are in the same key or present key) in synchronization and are selected by the wagering game machine based on at least one of random selection and a randomly ordered list, (§ [0009, 0043]), where the sound change Random access memory is considered to be a randomly ordered list, and (§ [0050]) shows that multiple instruments are played and that the music is played synchronized and same key.

3. Regarding claims 2 and 20; Hecht discloses wherein each audio element track comprises one or more instruments not present in the other audio element tracks, (§ [0005-0007]), wherein the system can make changes to the track by changing instruments or swapping voice from different singers means that the system sound files include instrument sound separate from voice sounds.

4. Regarding claims 3 and 21; Hecht discloses wherein at least one audio element track comprising one or more specific instruments comprises multiple phrases independently selectable for playback to create the played audio track, (¶ [0005]), where the changes include skipping to different section of the song, meaning that the songs are made of partitions or sections (phrases in the song).

5. Regarding claims 4 and 22; Hecht discloses wherein the multiple phrases are played back out of sequence to create the played audio track, (¶ [0043]), wherein if they are played randomly, they are out of sequence.

6. Regarding claims 5 and 23; Hecht discloses wherein the phrase sequence played back to create the played audio track comprises a randomly selected phrase order, (¶ [0043]), wherein if they are played randomly.

7. Regarding claims 6 and 24; Hecht discloses wherein the phrase sequence played back to create the played audio track is provided by an ordered list of phrases, (¶ [0005 and 0043]), wherein the sound change random access memory is considered to be a list of audio track to be played.

8. Regarding claims 7 and 25; Hecht discloses wherein the phrase sequence played back to create the played audio track comprises a phrase sequence selected based on

priority weighting assigned to the phrases, (§ [0038]), including primary sound files which are used to start the sound or give background to the played track.

9. Regarding claims 8 and 26; Hecht discloses wherein two or more audio element tracks are randomly combined to create the played audio track, (§ [0052]), whereas the tracks are played simultaneously and on-beat with the initial recording.

10. Regarding claims 9 and 27; Hecht discloses, wherein two or more audio element tracks are combined according to a predetermined list of audio element track combinations, (§ [0052]), whereas the tracks are played simultaneously and on-beat with the initial recording, these audio elements taken from the sound change random access memory list.

11. Regarding claims 10 and 28; Hecht discloses wherein two or more audio element tracks are selected and combined to produce the played audio track, the selection comprising evaluation of priority weighting of the various audio element tracks, (§ [0008 and 0038]), where there are specific instructions to follow priorities according to game changes and primary sounds.

12. Regarding claims 11 and 29; Hecht discloses wherein the audio element tracks are played back repeatedly, and wherein the length of at least two of the audio element

tracks are of different length, (¶ [0042]), wherein if the CPU determines the duration of play, means that audio elements are not limited to be of the same duration.

13. Regarding claims 12 and 30; Hecht discloses wherein the played audio track further comprises a portion that is not a combination of audio element tracks, (¶ [0038]), where the primary sound files appear to be plain files to be changed and combined, but for the start comprise a portion that not yet altered.

14. Regarding claims 13 and 31; Hecht discloses wherein at least one of the plurality of audio element tracks is played using at least one randomized parameter, the parameters including at least one of volume, panning, reverb, equalization, compression, distortion, flange, and phase parameters, (¶ [0005]).

15. Regarding claims 14 and 32; Hecht discloses wherein the audio element phrases are sorted into at least two subgroups, (¶ [0048]).

16. Regarding claims 15 and 33; Hecht discloses wherein the audio elements in the phrase subgroups are grouped by compatibility with other audio element phrase groups, (¶ [0048]).

17. Regarding claims 16 and 34; Hecht discloses wherein the audio element tracks have different sampling rates, (¶ [0005]).

18. Regarding claims 17 and 35; Hecht discloses wherein at least one of the audio element tracks comprises music, (§ [0038]).

19. Regarding claims 18 and 36; Hecht discloses wherein at least one of the audio element tracks comprises sound effects, (§ [0038]).

Examiner's Note

20. Examiner has cited paragraphs and figures in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

(10) Response to Argument

Background

This case relates to sound generation during the play of a casino style gaming machine, wherein changes to the music or sounds being played are effected by inputs from the players or game state of the machine.

Definitions

The current reference contains certain definitions;

Primary sound recording: As defined by the reference as an unaltered recording associated with different types of game events or input events and also associated with one or more variant sound recordings. [0056].

Variant sound recording: As defined by the reference is a variant of a primary sound recording or a variant of a variant sound recording associated with the same primary recording. [0014].

Music variable: As defined by the reference can include but is not limited to any changeable factor which affects the sound or quality of a sound recording., including, without limitation, musical key, musical tempo, musical style, musical melody, musical jump to a different section of a song or composition, musical beat, upbeat changes, downbeat changes, musical keys, musical notes, musical chords, musical sample rate, musical pitch, musical crescendo singing voice (e.g., a change from the voice of one singer to the voice of a different singer), syncopation, mode, scale or instrument. A musical skip can include a change or skip from one section of a sound recording to a different section of the sound recording. [0005].

Response to appellant's arguments

(Pages 9-12 of the Appeal Brief submitted 10 April 2011.)

In alleging patentability over Hecht, Appellant on page 9 states "*For example, independent claim 1 recites an audio module of a computerized gaming system that is operable to select audio element tracks that are played at the same time, wherein the "selected audio element*

tracks comprise two or more instruments played in the same key in synchronization." Independent claims 19 and 37 recites similar language. The Office Action states that Hecht, at paragraphs [0009], [0043] and [0050] describes the recited subject matter. Appellant respectfully disagrees. Paragraphs [0009] and [0043] of Hecht do not make any reference to keys or selecting track elements having the same key." The examiner point to paragraph [0050] where the changes can include changes in key, tempo, style and melody, for which the change is selectable and only when a change in key is requested does the key change, all other changes keep the key constant or the same, so that selecting track element having the same key is standard unless a key change is requested.

In alleging patentability over Hecht, Appellant on page 10 also states "*Further, the Office Action in the Response to Arguments section on page 3 asserts paragraph [0052] of Hecht as providing a teaching of the synchronized playback of audio tracks at the same time. Appellant respectfully traverses this assertion with regard to paragraph [0052]. In particular, the language of independent claim 1 provides, "an audio module . . . operable to play an audio track . . . comprising a plurality of selected audio element tracks that are played at the same time to create the played audio track, wherein the selected audio element tracks comprise two or more instruments played in the same key in synchronization." This portion of independent claim 1 is with regard to playing the two or more selected audio element tracks that are in the same key at the same time. Cited paragraph [0052] of Hecht instead describes transitioning from one audio track to another.*" The Examiner traverses this argument. The Appellant make reference of paragraph [0051] stating that "*at the same point in time (e.g., simultaneously)*", redefines the term simultaneously as to give new meaning to the term, whereas in paragraph [0012] Hecht

covers the use of the word simultaneous play as part of a fade in and fade out process in which the recordings are played concurrently. It is a far notion to express that by using in a sentence (*e.g., simultaneously*), *e.g.* meaning for example; that from then on the word simultaneously will have a new and separate meaning from its normal use, to mean the end of play of a recording and the start of a new one at the same point in time.

Also in page 11 the Appellant states "*Hecht does describe in the last sentence of paragraph [0051] a fade-in and fade-out between two sounds recordings and this may be a concurrent playing of the sound recordings for a brief period. However, this would not be a playing of the sound recordings at the same time in the same key as claimed.*" This argument is not in the scope of the claimed invention, since the admitted by the Appellant the recordings during the fade-in process are played concurrently, there is no aspect or limitation on period on time for which the concurrent sound playing takes place. The reference only needs to show that concurrent playing is occurring, and is admitted by the Appellant.

For the reasons stated above the Examiner deems the argument not persuasive and the rejections of independent claims 1, 19 and 37 and dependent claims 2-18 and 20-36 proper.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/FRANK M LEIVA/

Examiner, Art Unit 3717

Conferees:

/Melba Bumgarner/

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